

25 March 2020

Committee Secretariat
Finance and Expenditure Committee
Parliament Buildings
Wellington

By email: fe@parliament.govt.nz

SUBMISSION on Financial Markets (Conduct of Institutions) Amendment Bill

1. Introduction

Thank you for the opportunity to make a submission on the Financial Markets (Conduct of Institutions) Amendment Bill. This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

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We wish to speak to our submission.

2. General comments

Consumer NZ welcomes changes to improve regulation of financial institutions and address the current regulatory gaps. However, we consider the changes proposed in the bill don't go far enough and are disappointed all the issues identified in the previous Options Paper aren't addressed by the bill.

Creating a licensing scheme requiring financial institutions to treat consumers fairly and introducing regulations to prohibit incentives based on volume or value-sales targets will improve the status quo. However, we don't consider the changes will be adequate to bring about the desired changes in the industry.

We remain concerned about the potential harm to consumers from sales incentives used to remunerate staff and sales representatives in the industry.

Finally, we consider there should be a review of the amendments within two years of the changes being implemented to ensure they are adequately addressing problems.

3. Specific comments

Amended section 388

We support the new requirement for financial institutions to be licensed by the Financial Markets Authority (FMA). We consider this would establish a baseline for conduct, ensure providers are fully aware of their obligations to consumers and provide the regulator with better ability to monitor and enforce compliance.

New subpart 6A of part 6

We support new subpart 6A. In particular, we support:

- the establishment of a fair conduct principle, requiring financial institutions and intermediaries to treat consumers fairly, including by paying due regard to their interests.
- requiring financial institutions to establish, implement and maintain an effective fair conduct programme.
- requiring financial institutions to make the programme available to the public, the FMA, and to intermediaries.
- requiring financial institutions to take all reasonable steps to ensure intermediaries comply with the programme.
- requiring financial institutions and intermediaries to comply with regulations relating to incentives. As noted above, we remain concerned about conflicted remuneration and the fact financial institutions will still be able to offer remuneration and incentives not linked to sales volume or value.

Amended section 449

We support the introduction of strong civil liability provisions in order to deter non-compliance. However, the penalties in the FMC Act may not be sufficient to deter breaches or respond to non-compliance. We therefore support higher penalties, similar to those able to be imposed in Australia.

Amended section 546

We support the new regulation-making powers proposed in the bill. To ensure the legislation is effective and outcomes are able to be monitored, we consider the regulations must ensure financial institutions are required to publicly report on specific performance measures.

For example, in regard to mortgage brokers and aggregator firms, we've previously recommended there should be public reporting on:

- (a) The actual value of remuneration received by aggregators and the potential value if all criteria for remunerations were satisfied
- (b) The average pricing of home loans that brokers obtain on behalf of consumers
- (c) The average pricing of home loans provided by lenders according to each distribution channel
- (d) The distribution of loans by brokers between lenders to give consumers a better indication of the range of loans that brokers within the network offer.

Disclosure of this type of data is essential to ensure the regulator is able to effectively monitor the market and outcomes for consumers.

AMP Life insurance sale

We are concerned about the proposed sale of AMP Life to Bermuda-based company Resolution Life which will affect over 200,000 policyholders in New Zealand.

Although the bill, once introduced, would provide policy holders with some assurances the off-shore company would be required to implement policies, processes, systems and controls to meet the "fair treatment" standard, we are concerned that there are not enough protections in place to ensure policy holders rights are not compromised.

If the sale goes ahead, the protections in the bill could take several years to come into effect and would leave consumers vulnerable in the interim.

We encourage the Committee to consider what further protections are required in the bill to ensure policyholders are protected and the sales process is transparent.

Thank you for the opportunity to make a submission. If you require any further information, please do not hesitate to contact me.

Yours sincerely

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Consumer Advocate